LAMCO J. V. OPERATING COMPANY, Appellant, *v.* JAMES VERDIER, Appellee.

MOTION TO DISMISS AN APPEAL.

Argued October 27, 1976. Decided November 19, 1976.

1. There exists no procedure by which an insufficient revenue stamp on a motion to dismiss an appeal may be made sufficient, and the court will deny a motion showing such a deficiency.
2. A party who withdraws a motion must, as a prerequisite for filing a second motion in its place, pay the entire cost incurred by the opposing party up to the filing of the second motion; and his failure to do so is cause for denial of the second motion.

In an action for damages, a motion to dismiss an appeal and the accompanying affidavit each bore a $.25 revenue stamp, although a recent amendment to the Revenue and Finance Law required a one dollar revenue stamp for both such documents. Appellee's counsel, who contended that he had been unaware of the recent amendment when he filed his motion to dismiss because the published handbill of the amendment had not been circulated, filed a notice of withdrawal of the motion together with a second motion identical in nature with the first and a petition requesting permission to make the stamps on the motion and affidavit sufficient. Appellant objected to the motion and petition on several grounds, among them that appellee had not paid all of the costs incurred by appellant in filing the resistance to the first motion to dismiss as required by law, and, secondly, that there was no recognized procedure by which a deficiency in the amount of stamps could be corrected. The Court held in favor of the appellant on both grounds, on the first point that it was a prerequisite for filing the amended motion that the entire cost incurred by appellant should be paid; and, on the second, that there was no authority for validating the second motion to dismiss by correcting the amount of revenue

stamps affixed to it. The *motion to dismiss* was accordingly *denied.*

A dissenting judge took the view that appellee should have been allowed to correct the insufficient stamps in the interest of justice, especially in view of the lack of publicity of the recent amendment increasing the amount of stamps to be affixed to such documents. He also considdered the jurisdictional questions raised by the motion to dismiss of greater importance to receive the attention of the court than the insufficiency of stamps on the documents.

Toye C. Barnard, Moses K. Yangbe, and *Edward S. Carlor* for appellant. *B. Benoni Dunbar* for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

When this case was called for hearing on its merits, appellee moved the Court to dismiss the appeal in these proceedings on the grounds that (a) Appellant had neglected to file an approved appeal bond with the Clerk of Court within sixty days after rendition of final judgment, nor had he served on appellee a notice of the filing of the said appeal bond; (b) The statute makes it mandatory that there shall be a description of the real property offered as security in the said bond, and an inspection of the bond discloses that appellant has neglected to strictly adhere to this requirement of the statute, insisted upon in several opinions of this Court; (c) The appeal is further defective in that according to statute, the appeal bond shall be accompanied by an affidavit of sureties in which there shall be a description of the property sufficiently identified to establish the lien of the bond, and a careful perusal of the bond filed in the instant case shows that the affidavit of sureties filed therein is vague and uncertain and does not sufficiently describe nor identify the property covered by the bond. For these reasons ap-

pellee contends the appeal is a legal nullity and should be dismissed.

Appellant's counsel filed a five count resistance contending that: (a) The motion should be denied because it does not carry the revenue stamp as required by statute. The motion under consideration carries only a twenty-five-cent revenue stamp when the statute extant requires that a motion or petition should bear a one dollar revenue stamp. (b) The affidavit attached to said motion should have also carried a one dollar revenue stamp. On the contrary, it carries only a twenty-five-cent revenue stamp. (c) The motion is without legal merit in that final judgment was rendered on July 3, 1974, and a bill of exceptions approved by the trial judge was filed on July 9, 1974. The appeal bond was approved on August 9, 1974, and filed on August 12. Notice of completion of the appeal was issued on August 12, 1974, and served on the parties on August 13, 1974. All of these jurisdictional steps were taken within the statutory period. (d) The contention of appellee which states that the bond should have contained the description of the property offered as security is a misconstruction of the statute, for the statute does not require that the property should be described in the appeal bond. It provides that the Clerk of Court shall record in his office the names of the sureties in alphabetical order; the amount of the bond; a description of the real property offered as security thereunder sufficiently identified to clearly establish the lien of the bond; the date of such recording; and the title of the action, proceeding, or estate. These are not duties devolving upon the appellant. There is no record before the Court that such entries were not made in the trial court by the Clerk. (e) The affidavit of sureties does carry a description of the property offered as security and said properties are specifically described by their numbers and their locations which can easily be identified in the City of Buchanan where they are located; and appellee has failed to indi-

cate what would have been a sufficient description of the properties. There are no other numbers identical to those describing the properties identified in the affidavit of sureties. The description thereof is certain, distinct, and unequivocal.

Apparently appellee was persuaded by these contentions of appellant for on October 26, 1976, he filed a notice of withdrawal of his motion to dismiss the appeal and substituted for it a second motion identical in nature with that which was withdrawn, together with a petition moving the court to grant him permission to make the stamps on his motion to dismiss and affidavit attached thereto sufficient. Counsel for appellee explained that at the time he prepared the motion papers and affidavit on October 20, 1976, the act increasing the amount of revenue stamps required for those papers, though published in handbills, had not yet been circulated and he was unaware of the amendment. He therefore requested permission to make the stamp on the motion to dismiss and the affidavit sufficient by affixing a one dollar stamp to each. He cited as authority for his position *Scotland* v. *Republic,* 3 LLR 252 (1931); and *Acolatse* v. *Dennis,* 22 LLR 147 (1973).

The second motion was attacked by appellant's counsel on the grounds of (a) incomplete payment of costs and expenses incurred by him in filing the resistance to the first motion to dismiss, since he had incurred the amount of $13.50 out of which appellee had paid only $6.00; (b) failure of appellee to caption the motion, "amended motion."

Appellant answered count 1 of the second motion in which appellee contends that appellant had failed to notify him of the filing of the appeal bond by serving a copy on him, by pointing out that appellee was duly notified of the filing of the appeal bond by service on him of the notice of completion of the appeal, which appellee acknowledged and has not denied receiving, according to the rec-

ords before the Court. Appellant argued that the Court should treat the second motion as a nullity and proceed to hear the case on its merits.

The lower court, however, decided to hear argument on the petition requesting permission to make the stamps on the second motion to dismiss the appeal and the affidavit sufficient. During the hearing on the petition, appellant's counsel contended that the filing of the petition was a novel practice for which no authority existed and that there was no procedure by which insufficient revenue stamps on motion papers could be made sufficient. He concluded that the documents filed on the motion and the affidavit attached thereto, not having met the requirement of the statute, are invalid and without legal effect.

He argued that the *Scotland* and *Acolatse* cases, *supra,* are inapplicable to the given case, for in those cases the unstamped documents were sought to be introduced into evidence, while in the present case it was the motion to dismiss the appeal which did not bear the required revenue stamp. He pointed out also that the statute on which appellee's counsel relied, permitting a mistake in the amount of a revenue stamp affixed to a document to be rectified within 48 hours after it was proffered in court, was repealed in 1956 and superseded by section 573 of the Revenue and Finance Law of the 1956 Code, which contained no such provision. In support of his position he cited *Gibson* v. *Tubman,* 13 LLR 217 (1958), in which the Court, relying on the 1956 Code, declared that there was no statutory provision authorizing 48 hours to be allowed a party to affix to a document a required revenue stamp which had been omitted. Appellant therefore moved the court that the original motion filed by the appellee having been withdrawn, after it was attacked for insufficiency of revenue stamps, should not be considered by us; that the second motion not being an amended one as provided for by statutes and the rule of the Supreme Court, should not be considered as properly before

us; and that the contention of appellee's counsel that the Act of the Legislature published on October 7, 1976, was not in legal circulation, should be ignored, since the Act was published about 13 days prior to the filing of the motion to dismiss.

Contradicting the contentions of appellant, appellee's counsel insisted that the opinion of this Court in the *Acolatse* case was applicable; hence this Court is by duty bound to grant him 48 hours within which to make his stamps sufficient, especially since at the time of the filing of his motion he was not aware of the recent statute upon which appellant's counsel has relied.

In order to resolve the issues before us, we have deemed it appropriate to propound the following questions, the answers to which we believe, may lead us to a fair determination of the motions. They are:

1. Is appellee's withdrawal of his original motion, after it was attacked for violation of the Act to Amend Section 570 of Chapter 18 of the Revenue and Finance Law with Respect to Stamp Duties, consistent or inconsistent with our statutes on withdrawal?

2. What effect does the subsequent motion to dismiss the appeal have, when the issues raised therein are identical in nature, as earlier observed in this opinion, with the original motion to dismiss? Is it surplusage?

3. Does the petition seeking permission to make appellee's deficient revenue stamp sufficient have legal standing or support in our statutes?

Answering these questions in order, we wish to observe that the stamps which parties are required to place on documents are regarded as a form of excise imposed upon certain classes of legal papers and the requirement is usually enforced by denying legal effect to such papers unless they bear the required stamp, as well as by a penalty of fine or imprisonment for executing the writings without the stamp.

The Revenue and Finance Law provides that:

"No document or instrument subject to stamp duty under the provisions of section 570 above shall be deemed valid or received in evidence in court unless it bears revenue stamps of the Republic of Liberia cancelled in accordance with the provisions of section 571 above. This section shall not, however, be understood to exempt from payment of the stamp duty hereinbefore specified any document or instrument even though such document or instrument is not required as evidence before a court." 1956 Code 35:573.

From our point of view, this statute is intended to invalidate any document or instrument that does not bear any revenue stamp. It does not appear to us that it has reference to a document that is partially stamped for which the holder seeks permission to make sufficient the deficient stamp affixed thereon. It is therefore necessary to look further for authority to support the position taken by appellee's counsel, as we do not believe that the facts and circumstances appearing in the *Acolatse* case, upon which appellee relies so much, are applicable to the present one as authority for the granting of 48 hours within which to make the stamp sufficient.

In that case the instrument involved was a "statement of understanding" by which the appellees agreed to convey to their attorney, the appellant, 50 acres of land as compensation for his legal services. In an action for specific performance to enforce the agreement, the attorney sought to introduce the statement of understanding and two supporting documents in evidence, but the objection was raised that they did not have revenue stamps affixed as required. The Supreme Court held on appeal that the statement of understanding, being a contract, required a revenue stamp, but that 48 hours should be allowed to correct the omission before barring receipt of the document in evidence. In the words of the Court:

"Though this document was probated and registered

according to law, since it does not bear the required $1.00 revenue stamp, it is invalid and inadmissible in evidence under section 573 of such title [Revenue and Finance Law]; but when instruments which ought to be stamped are offered in evidence without the required revenue stamps, the court will, in keeping with the statute, allow forty-eight hours for the omission to be rectified. *Scotland* v. *Republic,* 3 LLR 252 (1931).

"It was, therefore, error for the trial judge to rule the document inadmissible in evidence without giving appellant forty-eight hours to rectify the omission.

"The purpose of the statute requiring such a document to be stamped is primarily to raise revenue and avoid fraud, but it is not intended to impair the obligations of contracts, nor can it be construed that the Legislature intended it to do so." *Acolatse* v. *Dennis,* 22 LLR 147, 152 (1973).

Now let not the parties to this case be confused as to the application of the reasoning in the *Acolatse* case to the facts now before us. There is a sharp difference in the applicable rules. In the *Acolatse* case, there was a complete absence of a revenue stamp of any kind on the document sought to be introduced into evidence at the trial of the case; but because the statement of understanding was a contract recognized by both parties, and because the intent and purpose of the Legislature with respect to the Stamp Duty Act was "primarily to raise revenue and avoid fraud," and was not intended "to impair the obligations of contracts," the Court took the view that appellant in that case should have been given 48 hours to rectify the omission, since there was no stamp at all on the instrument being offered in evidence.

In the instant case, appellee wished to be afforded the opportunity to purchase an additional seventy-five cents worth of revenue stamps in order to qualify the motion to dismiss and the affidavit as valid legal documents. He

offered no sound legal authority in support of his proposed method to accomplish this. Since he failed to do this, we find it extremely difficult to reach a conclusion granting his petition to make the stamps sufficient. In the *Acolatse* case, affixing the proper stamp was a necessary preliminary to admission of the proffered document in evidence at the trial. No such situation exists here. The facts of the two cases are totally unlike one another and are therefore subject to entirely different rules.

It should not be the thinking of the parties in this case that, by this opinion, we have departed or deviated from the intent and purpose of the Legislature or have failed to give full meaning and effect to the Stamp Duty Act. If anything, our position tends to strengthen and support the act of the Legislature. The parties should clearly understand that the intent of the Stamp Act is not only to raise revenues for the Government, but also to require a preliminary step to be taken when filing motions, affidavits, or pleadings. This step is a prerequisite to filing of documents before trial, and when not complied with, request thereafter for permission to make an insufficient stamp sufficient will be denied by the court. A careful reading of the recent Stamp Duty Act and of the other authorities cited herein shows no satisfactory provision for a procedure for making a stamp sufficient. The previous relevant statutes of 1915 and 1937 were implemented by this Court during its March 1973 Term although they had been repealed by the 1956 Code. The statute of October 7, 1976, has superseded all previous relevant statutes, and the petition should be denied.

We now refer to the questions relating to withdrawal of the motion to dismiss and its effect. Appellant has contended in his resistance to the second motion that it be denied for the reason that in filing resistance to the first motion he incurred costs and expenses amounting to $13.50 out of which appellee refunded only $6.00 as the cost of

returns and expenses incurred by appellant in filing the resistance to the first motion to dismiss, leaving a balance of $7.50, which balance appellee has failed to pay, up to, and including, the filing date of the resistance to the second motion to dismiss the appeal. Appellant argues that according to the statutes on amendment of pleadings, as well as opinions of this Court, it is a prerequisite for filing amended pleadings (and this includes motions) that the entire cost and expenses, incurred by the opposing party in filing the pleadings to which an amendment is filed, should be paid in full.

To this contention, appellee's counsel admitted having paid only $6.00, but argued that the balance could be paid *nunc pro tunc.*

We shall refuse to accept this condition, as this Court has previously stated:

> "By the statute laws of Liberia, a plaintiff may once amend his complaint, or withdraw it and file a new one; but he must pay the whole costs of the action up to the time of such withdrawal.
>
> "This, however, does not apply to a withdrawal of the whole case; for by such withdrawal, the case being withdrawn from its jurisdiction, the court has no power to award costs.
>
> "Where, however, a case is withdrawn and re-entered, the court may make the payment of the first costs a condition for hearing the case; a failure to pay such costs before re-entering the case is not however legal ground for dismissing the action. The costs may be paid *nunc pro tunc.*" *Ernest* v. *McFoy,* 2 LLR 295, 296 (1918); see also *Davies* v. *Yancy,* 10 LLR 89 (1949).

In the instant case, not having withdrawn the entire case, but only the motion to dismiss, appellee should have paid the entire costs incurred by appellant up to and including the filing of the second motion. His failure to

do so renders the second motion ineffectual and dismissible. Count 1 of appellant's resistance to the second motion to dismiss is therefore sustained.

We must take the position that the notice of withdrawal does not constitute a withdrawal. Movents are governed by the statutes conferring the right of action and must comply with the conditions laid down by the statute. Since no legal withdrawal has been made in accordance with law, the original motion should be considered still pending before this Court, and should remain so until final disposition has been made or until movent has withdrawn his entire case.

However, considering the issue raised in count 1 of the resistance to the first motion to dismiss relating to the failure of appellee to have a sufficient revenue stamp affixed to the original motion and to the affidavit as is required by the Act to Amend Section 570 of Chapter 18 of the Revenue and Finance Law with Respect to Stamp Duties, we are compelled to sustain the said count, thus rendering the entire motion a legal nullity.

We have held that "it is admittedly within the province and power of the Legislature to amend, supplement, or repeal any act previously passed by them," *Maier & Jurgensmeyer* v. *Horace,* 6 LLR 256, 261 (1938), and it is "the duty of this Court to construe them in harmony with the spirit and intention of those so made by the Legislature." *Id.,* 262.

As much as we would have liked to pass upon the other issues raised in the motion to dismiss, we are unable to do so, because the document being devoid of the legal requirements on its face must be declared ineffectual and improperly before the Court. Consequently there being no motion or other legal documents before the court that would prevent us from hearing the appeal on its merits, and there being no authority to make the insufficient stamp sufficient and have same placed on the second motion, appellee's motion to dismiss the appeal is hereby denied

with costs against appellee. And it is hereby so ordered. However, Mr. Justice Horace not having agreed with our findings and conclusions in this matter has prepared and filed a dissenting opinion which he now reads.

Motion denied.

MR. JUSTICE HORACE dissenting:

The differences in the views of my colleagues and me is based mainly on what is the more important aspect of the case—the insufficiency of stamps on the motion to dismiss or the important issue of the defectiveness of the appeal bond because of a defective affidavit of sureties attached to said bond.

It might be well to review some of the more important circumstances involved in the case before stating the grounds of my dissent. Pending before the Supreme Court is an appeal taken by the Lamco J. V. Operating Company from a judgment rendered against them in an action of damages brought by James Verdier, a former employee of Lamco. According to the record before us, all the jurisdictional steps for the appeal were completed by the service of a notice of completion of the appeal on the parties on August 13, 1974. Before the appeal could be heard at this term of the Supreme Court, appellee, James Verdier, by and through his counsel, filed in the office of the Clerk of this Court on October 20, 1976, a motion to dismiss the appeal. The grounds set in the motion to dismiss were: (1) that a copy of the appeal bond was not served on him in keeping with statute; (2) that there was no description of the property offered as security to the bond; (3) that the description of the property in the affidavit of sureties to the bond was not sufficient to establish a lien on the property.

Appellants resisted the motion on October 23, 1976, by contending (1) that the motion was defective because it did not carry a one dollar stamp on the motion and also a

one dollar stamp on the affidavit to the motion as required by the amendatory statute to section 570 of chapter 18 of the Revenue and Finance Law published October 7, 1976, but rather the motion and affidavit each carried only a twenty-five-cent revenue stamp; (2) that the statute on description of the property to secure an appeal bond is a duty imposed on the clerk of court as outlined in section 63.2 of the Civil Procedure Law (Rev. Code, Title 1); (3) that all the jurisdictional steps to perfect an appeal had been taken by appellant; and (4) that the description of the property in the affidavit of sureties was sufficient to establish a lien on the property offered.

On October 25, 1976, appellee filed an application to make the stamp sufficient on his motion to dismiss and the affidavit to said motion. I must mention here that this application to make the stamp sufficient on the motion and affidavit was apparently made before appellee was aware of the resistance by appellant to his motion to dismiss, because a copy of the resistance was passed to appellee's counsel by counsel for appellant at counsel's table when the matter was called for hearing. Because appellee's counsel had just been served with appellant's resistance the matter was postponed to permit him to file whatever paper he deemed proper in the premises.

When the case was called on October 26, 1976, it was brought to the attention of the court that appellee had filed a withdrawal of both his motion to dismiss and his application to make the stamp sufficient and had simultaneously filed another motion to dismiss the appeal with accompanying affidavit. The only difference between the second motion and the first is that the second motion and affidavit carried each a one dollar stamp. Appellant was afforded an opportunity to resist the second motion which he did. Aside from the traversal of the issues as outlined in his first resistance, appellant attacked the withdrawal and filing of another motion as being unmeritorious on the grounds that appellee had failed to pay all the accrued

costs of appellant when he withdrew his motion before filing the second motion in keeping with section 9.10(1)(b) of the Civil Procedure Law (Rev. Code, Title 1), and that he had failed to name his second motion an "amended motion" in keeping with the statute on amended pleadings. After hearing brief arguments on the withdrawal, the court decided that the attack on the withdrawal, especially the lack of payment of all accrued costs was sound and therefore the withdrawal was disallowed. That put the matter at status quo before the withdrawal. The next point was consideration of the application to make the stamp sufficient. My colleagues of the majority hold that there is no statutory provision authorizing such a procedure, since the old statutes of 1915 and 1937, which gave the opposing party 48 hours to make the stamp sufficient had been repealed by the 1956 Code of Laws, and the precedents in the Liberian Law Reports are unavailing because of their reliance on the repealed statutes.

It is at this point that I entertain a different view from that of my colleagues. I admit that the opinion in *Scotland* v. *Republic,* 3 LLR 252 (1931), was based on a statute, but I find such conflicting opinions in the precedents that I feel that we should at least have given favorable consideration to the application to make the stamp sufficient in view of the other points which I consider of greater importance in the motion to dismiss than that of insufficiency of the stamp on the motion and affidavit. Let me elaborate.

In *Scotland* v. *Republic, supra,* this Court held that when instruments which ought to be stamped are produced in evidence without the required revenue stamps, the Court will, in keeping with statute, allow 48 hours for the omission to be rectified.

In *Leigh* v. *Taylor,* 9 LLR 329, 336, 337 (1947), although there was in effect the statute of 1937, which carried the same provision as the 1915 statute upon which the *Scotland* decision was based, this Court held that:

"Our recent statute on appeals of 1938 assigns as the second reason for dismissal of an appeal the following: 'Failure to file an approved appeal bond or where said bond is fatally defective.' L. 1938, ch. III, § 1. Appellant's appeal bond shows that it was duly approved by the trial judge, and obviously it must have been legally stamped when the judge approved it. Notwithstanding this, however, no presumption of such a nature could be accepted to refute the certificate issued by the clerk of the trial court under seal, stating in definite terms that said appeal bond had only a twenty-cent stamp affixed thereto, as filed attached to appellant's resistance. The Court must therefore uphold the statute, and in consequence thereof it rules said appeal bond defective."

In *Gibson* v. *Tubman,* 13 LLR 217, 220 (1958), this Court held, on the basis of the 1956 Code of Laws, that "failure to stamp an appeal bond within the time prescribed for perfecting an appeal would be a material defect in said bond and would thereby render same invalid on appeal."

In light of the last two decisions of the Court quoted *supra,* though they relate to bonds and not motions or pleadings, it could be reasonably presumed that lack of a stamp or insufficiency of a stamp rendered the instrument in question invalid.

But what can we say about the decision of this Court in 1973 which stated that time should be given to stamp an instrument offered in evidence? In the case *Acolatse* v. *Dennis,* 22 LLR 147 (1973), speaking about a statement of understanding that was not stamped, the Court held that:

"Though this document was probated and registered according to law, since it does not bear the required $1.00 revenue stamp, it is invalid and inadmissible in evidence under section 573 of such title [Revenue and Finance Law, 1956 Code, Title 35]; but when instru-

ments which ought to be stamped are offered in evidence without the required revenue stamps, the court will, in keeping with the statute, allow forty-eight hours for the omission to be rectified. *Scotland* v. *Republic,* 3 LLR 252 (1931)."

It was, therefore, a prejudicial error to appellant for the trial judge to rule that SP/1 was inadmissible in evidence without giving him 48 hours to rectify the omission. "The purpose of the statute requiring such a document to be stamped is primarily to raise revenue and avoid fraud, but it is not intended to impair the obligations of contracts, nor can it be construed that the Legislature intended it to do so." *Scotland* v. *Republic, supra,* at page 152.

So we see that this Court as late as 1973 held that stamps could be placed on an unstamped instrument that was being offered in evidence. It strikes me that there is more reason to make the stamps sufficient on a motion if it is permitted to stamp a document that is not stamped at all.

A point that I would like to make is that all the precedents I have quoted refer either to instruments offered as evidence in a trial or appeal bonds. None refer to motions or pleadings. I feel that with such conflicting precedents we should have, in the interest of justice, in our discretion, allowed the stamps to be made sufficient and passed on the other more important points raised in the motion to dismiss, especially so in the face of the many recent opinions of this Court dismissing appeals for want of proper description of property in affidavits of sureties to appeal bonds.

In arguments before us on the point that because the stamp on the motion to dismiss rendered said motion invalid, counsel for appellant stressed that the amendatory statute to section 570 of the Revenue and Finance Law with respect to stamp duties published October 7, 1976, is the prevailing statute, and it does not provide for making

stamps sufficient on documents that require the affixing of revenue stamps to make them valid, and that since the motion was filed after the publication of the amended law, the motion was invalid.

That proposition may be considered incontrovertible in ordinary circumstances, but I feel that two points should be taken into consideration. The first is that the motion was stamped in keeping with the provision of the old law on stamp duties and not that it was not stamped at all. The counsel for appellee argued emphatically that he was not aware that the amended law existed when he filed his motion to dismiss, as up to that time it had not been circulated.

The second point for consideration is that I have doubts whether the amended law was a matter of common knowledge on or soon after its date of publication. For one thing, even we of this bench had no knowledge of such a law until it was circulated among us by the Special Assistant to the Chief Justice on October 22, 1976, even though it is supposed to have been published October 7, 1976. If the Justices of the Supreme Court had no knowledge of the law until October 22, 1976, and we are supposed to know of all new laws to facilitate our work in the administration of justice, how could it be expected that other persons including counsellors and attorneys generally had knowledge of such a law? My doubts are the more justified by experience with the publication of our laws in handbills, which are often not circulated for months after the purported date of publication. In all fairness, therefore, I feel that consideration should have been given the appellee in view of the circumstances.

It is my considered view that the important issues raised in the motion to dismiss outweighed the issue of the insufficiency of stamps on the motion. I am not convinced that the insufficiency of stamps is in itself a jurisdictional issue. That an instrument unstamped might be considered invalid in certain circumstances cannot be disputed,

but in circumstances such as the one under consideration, could it be reasonably held that where an instrument was stamped in keeping with a law, though later amended, it should be declared invalid without first affording the proponent of such instrument an opportunity to rectify the omission? I emphasize the present circumstances for reasons already stated. The laws must be upheld, but the maxim that "the letter of the law killeth, but the spirit maketh alive," should not be forgotten.

I am fully convinced in my own mind that the issue of a defective affidavit of sureties to an appeal bond is much more important than that of insufficient stamps on a motion to dismiss, because the defective affidavit to an appeal bond, which makes the bond defective, is squarely and indisputably a jurisdictional issue which we should not ignore. Rev. Code 1:53.1, 53.2(3).

Our distinguished colleague speaking for the majority has said that "it is a well-established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes in the conduct of their case by deciding otherwise than in accordance with their rights." I am in entire agreement with this principle, but I think it applies more to the position I have taken than to that of my colleagues of the majority.

Because of the reasons hereinabove stated, I find myself in disagreement with the majority of my distinguished colleagues and therefore have not signed the judgment in this case.